



COMMUNITY DEVELOPMENT AGENCY, PLANNING DIVISION
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MITIGATED NEGATIVE DECLARATION

I. DESCRIPTION OF PROJECT:

Application #s: ZA-09-10/SD-09-09/DA-09-07/EA-09-25

APN: 767-23-026/ -027/ -029

Project Title: Diamond Creek Villas Residential Project (Monterey - Monterey Dynasty)

Project Location: 9.75 acres on Monterey Road 800 feet northwest of Watsonville Road.

Project Proponent:

Monterey Dynasty LLC
P.O. Box 2610, Cupertino, CA 95015

Project Description: The project applicant, Monterey Dynasty, proposes zoning amendment, subdivision and site development to create two commercial lots on approximately 2.2 acres adjacent to Monterey Road and residential development including three condominium parcels, 29 townhome lots, and a variety of common lots for private streets, parking, landscaping, and private recreational use on the balance of the project site area. A new public roadway is proposed to provide for circulation to the project. Build-out would result in up to 130 residential units and approximately 27,000 square feet of commercial space.

II. DETERMINATION

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures are included in

the project, and, therefore, this **MITIGATED NEGATIVE DECLARATION** has been prepared.

III. CONDITIONS (Mitigation and Avoidance Measures):

A. Air Quality

SM AQ-1 Future development on the project site shall implement the following Pre-Construction Measures to reduce construction-related dust impacts to a less than significant level:

- a. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- b. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- c. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- d. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall be required to maintain at least two feet of freeboard.
- e. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- f. Vegetation in disturbed areas shall be replanted as quickly as possible.

B. Biological Resources

SM BIO-1 In conformance with the City's Burrowing Owl Habitat Mitigation Plan, future development on the project site shall implement the following measures to avoid direct impacts to burrowing owls and to offset impacts to non-native grassland habitat.

- a. Complete pre-construction surveys to determine if burrowing owls are present within the footprint of the proposed grading area, no more than 30 days prior to initiation of any construction-related activities.

- b. Should burrowing owls be found on or adjacent to the site during breeding season (February 1 through August 31), exclusion zones with a 250-foot radius from occupied burrows, shall be established. All project-related activities shall occur outside the exclusion area until the young have fledged. If preconstruction surveys are completed during the non-breeding season and burrowing owls are observed on the site, the owls may be relocated upon approval of the California Department of Fish and Game once mitigation has been provided.
- c. A final report on burrowing owls, including any protection measures, shall be submitted to the Director of Community Development prior to grading.

MM BIO-2 Prior to any tree removal or initial ground disturbance activities (i.e. site grading) occurring between February 1 and August 31 (breeding bird season), a qualified biologist shall conduct a pre-construction raptor survey to determine if protected raptor species are nesting on-site. Raptor nests shall be provided a 150 setback (buffer) from construction activities during the breeding season.

MM BIO-3 Based on the presence of potentially-USACE-jurisdictional wetlands within the project site's boundaries by the USACE, the applicant shall implement the following measures prior to site disturbance:

- a. Have the submitted delineation report verified by USACE-personnel through a field verification site visit;
- b. Prepare and submit necessary resource agency permit applications for involved regulatory agencies (USACE and RWQCB) and obtain approvals prior to the implementation of the subject project improvements; and
- c. Upon receiving confirmation that the wetland area is verified as jurisdictional under federal (USACE) and/or state (RWQCB) clean water act statutes (Sections 404 and 401, respectively), the applicant is responsible for providing suitable on-site wetland mitigation compensation in the form of 1:1 replacement for the 0.09 acres of wetlands impacted by the project's implementation by creating a similarly sized wetland area on site and ensuring its creation, protection and maintenance for a period of up to three years through documented annual quarterly wetland site monitoring and adaptive

management. Annual wetland monitoring reports (with photo's documenting site conditions) should be provided to the USACE and the City during the three year period of wetland establishment. All other project-specific permit conditions contained in USACE (and/or RWQCB) permits shall also be followed.

- d. If no wetland impact mitigation compensation (i.e. wetland creation) can be practicably achieved on-site, then the applicant shall purchase wetland mitigation credits at a local (San Francisco Bay area) wetland mitigation bank in order to compensate for the loss of 0.09 acres of on site wetlands at a 2:1 replacement ratio. Additionally, the RWQCB could likely require site-specific mitigation measures that would pertain to water quality protections. Compensatory wetland mitigation will be finalized and incorporated prior to any site grading and is the responsibility of the applicant to implement.

MM BIO-4 The applicant shall submit a landscape plan for the review and approval of the Community Development Director which includes replacement of any valley oak trees with trunk diameter of 18 inches or greater that are removed with the same species. Replacement shall be at a 2:1 ratio and replacement trees shall be minimum 48-inch boxed specimens or equivalent, and shall be located and planted in conformance with the guidance in the California Oaks Foundation publication, "Compatible Plants Under & Around Oaks." The health of the trees shall be monitored for no less than ten years, and replacement trees provided in the case of death or significant decline as judged by the Community Development Director. A bond for the cost of replacement shall be provided for a ten-year period following planting.

Additionally, for all trees that are preserved within the project area or for trees that are on adjacent parcels, but have their dripline within proposed areas to be graded as part of the construction of the project, the following tree preservation Best Practices will apply:

- a. Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.
- b. Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over 1" diameter) should be exposed approximately 12" beyond the area to be

disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Avoid tearing, or otherwise disturbing that portion of the root(s) to remain.

- c. Construct a temporary fence as far from the tree stem (trunk) as possible, completely surrounding the tree, and 6-8 feet in height. Post no parking or storage signs outside/on fencing. Do not attach posting to the main stem of the tree.
- d. Do not allow vehicles, equipment, pedestrian traffic; building materials or debris storage; or disposal of toxic or other materials inside of the fenced off area.
- e. Avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least 1-2 years following completion of construction.
- f. Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than 6 lbs. of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.
- g. Mulch 'rooting' area with an acidic, organic compost or mulch.
- h. Arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as they occur, or as appropriate.
- i. Individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within these general guidelines.

C. Cultural Resources

SM CR-1 Construction personnel involved in the site clearing and subsequent grading and trenching shall be informed that there is a potential for the discovery of subsurface cultural resources. Indicators of archaeological site

deposits include, but are not limited to, the following: darker than surrounding soils, evidence of fire (ash, fire altered rock and earth, carbon flecks), concentrations of stone, bone and shellfish, artifacts of these materials and animal or human burials.

SM CR-2 In the event any unanticipated subsurface cultural materials are exposed during construction, all grading and/or excavation operations within 50 feet of the find shall be halted, and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.

SM CR-3 Because this project may adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials, the following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply. If human remains are discovered, it is probable they are the remains of Native Americans.

- a. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
 - Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled.
 - Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
- b. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-

stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.

- c. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).
- d. The discovery locale shall be secured (e.g., 24 hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
- e. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Community Development Director (408) 779-7247
 - The Contractor’s Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
- f. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

- g. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
- h. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
- i. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Community Development Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
- j. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

SM CR-4 If resources are encountered, a final report shall be submitted to the Director of Community Development. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Community Development.

SM CR-5 If paleontological resources are encountered during subsurface construction activities, all work within 50 feet of the discovery shall be redirected until a qualified paleontologist can evaluate the finds and make recommendations. If the paleontological resources are found to be significant, they shall be avoided by project construction activities and recovered by a qualified paleontologist. Upon completion of the recovery, a paleontological assessment shall be conducted by a qualified paleontologist to determine if further monitoring for paleontological resources is required. The assessment

shall include: 1) the results of any geotechnical investigation prepared for the project site; 2) specific details of the construction plans for the project site; 3) background research; and 4) limited subsurface investigation within the project site. If a high potential to encounter paleontological resources is confirmed, a monitoring plan of further project subsurface construction shall be prepared in conjunction with this assessment. After project subsurface construction has ended, a report documenting monitoring, methods, findings, and further recommendations regarding paleontological resources shall be prepared and submitted to the Director of Community Development.

D. Hydrology and Water Quality

MM HY-1 Subject to the review of the Morgan Hill Engineering Division, as part of Architectural and Site Plan Review application, the project applicant shall prepare and implement in perpetuity a maintenance program for the proposed project's low impact development storm water system.

An operations and maintenance plan shall be developed to ensure that the infiltration basin and vegetated swales are kept in a state where they perform properly. The low impact development operations and maintenance plan shall meet the standards of, and could be subject to the review and approval of, the Santa Clara Valley Water District and the Central Coast Regional Water Quality Control Board.

SM HY-2. A storm drainage study shall be submitted to the Director of Public Works for review and approval prior to recordation of final map. The storm drainage study shall include calculations to determine detention and operations and demonstrate how the runoff detention facilities will accommodate a 25-year storm flow.

MM HY-3 The applicant shall prepare final grading plans that are in substantial compliance with the tentative grading design. Following the completion of on-site grading and prior to building foundation inspection approval, a registered civil engineer or surveyor shall prepare a field survey to certify in writing that the final grades are in conformance with the grading plans.

MM HY-4 The project site shall be graded such that the first floor of all structures constructed within areas designated as zone AE on the Federal Emergency Management Agency's Flood Insurance Rate Map shall be a minimum of one foot above the base flood level as shown on the flood map.

The applicant shall obtain an elevation certificate and respective FEMA letter of map revision based on fill (LOMR-F) for each building, or group of buildings, prior to occupancy. Due to project phasing, multiple LOMR-F applications may be required.

IV. FINDING

The City of Morgan Hill Community Development Director hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the initial study are included in the project.

Mitchell Oshinsky

Community & Economic Development Director

Date: _____